

ENTERED

July 02, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MORGAN GOINS,

Plaintiff,

VS.

CITY OF HOUSTON, *et al*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:20-CV-1553

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court in the above referenced proceeding is Defendant Sam's East Inc.'s Motion to Dismiss (Doc. No. 33); Defendants City of Houston and Vincent LaRue's Motion to Dismiss (Doc. No. 38); and Judge Stacy's Memorandum and Recommendation (Doc. No. 49) that the Court grant the Defendants' Motions to Dismiss. Although Plaintiff failed to respond to the Motions as well as the Show Cause Order (Doc. No. 43), Plaintiff filed objections to the Memorandum and Recommendation (Doc. No. 50) entitled "Plaintiff's Response to Defendants City of Houston and Vincent Larue's Motions to Strike and Request for Leave to File Amended Complaint" stating in the introductory paragraph that he moves to reconsider the Order dated June 7, 2021 which is the Memorandum and Recommendation.

The Court has carefully reviewed, *de novo*, the filings, the applicable law, the Magistrate Judge's Memorandum and Recommendation, and the objections thereto, and agrees with the Magistrate Judge's conclusion that Plaintiff's factual allegations do not state a plausible intentional infliction of emotional distress claim, and because the City of Houston has governmental immunity on such claims, the emotional distress claim must be dismissed. Additionally, the Court further agrees that Defendants LaRue and Sam's were not timely and/or properly served and Plaintiff has not stated plausible claims against LaRue and Sam's.

Accordingly, it is hereby

ORDERED that Plaintiff Objections (Doc. No. 50) are **OVERRULED**; the Memorandum and Recommendation (Doc. No. 49) is **ADOPTED**; and Defendant Sam's East Inc.'s Motion to Dismiss (Doc. No. 33); Defendants City of Houston and Vincent LaRue's Motion to Dismiss (Doc. No. 38) are **GRANTED**. It is further

ORDERED that Plaintiff's claims against Defendant LaRue are **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that Plaintiff's claims against the City of Houston and Sam's East Inc. are **DISMISSED WITH PREJUDICE**.

Entry of this Order shall constitute entry of final judgment.

SIGNED at Houston, Texas, this 20th day of July 2021.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE